

**OCCUPATIONAL SAFETY  
AND HEALTH STANDARDS BOARD**

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**FINAL STATEMENT OF REASONS****TITLE 8  
CALIFORNIA CODE OF REGULATIONS****General Industry Safety Orders**

Chapter 4, Subchapter 7, Article 108, Sections 5157 and 5158;

**Ship Building, Ship Repairing, And Ship Breaking Safety Orders**

Subchapter 18, Article 4, Section 8355

**Confined Spaces**

There are no modifications to the information contained in the Initial Statement of Reasons.

**SUMMARY AND RESPONSE TO ORAL AND WRITTEN COMMENTS****I. Written Comments**

Ellayne Haller, Director of Safety and Training, Las Gallinas Valley Sanitary District of Marin County; David Patzer, Loss Control Advisor, California Sanitation Risk Management Authority; and Lorri McAuliffe, President, Utilities Safety Services by a joint letter dated November 8, 2000.

**Comment #1:**

The commenters state that the proposal does not correct ambiguities and confusion between Sections 5157 and 5158. The commenters enclosed an August 31, 1995 letter from the Division of Occupational Safety and Health (Division) that provides guidance that they had hoped would be incorporated into the proposal. Specifically, during renovation or additions to existing facilities, Section 5157 should be used by contractors for permit spaces designated by the host employer. Section 5158 would only apply to new construction at the host employer's facility.

**Response #1:**

Adding multi-employer communication obligations and specifically including employers covered by all three sections is intended to correct any ambiguities and confusion that may occur between any and all employers working in a confined space. The Division, in its November 5, 1999 memorandum, requesting the proposed revision did not enclose the referenced letter nor recommend such proposed language. The August 31, 1995 letter provides guidance that the host and contractor employers can use in developing their confined space programs but it is not mandated by Title 8 regulations. The proposal will make it easier for hosts and contractors who

choose to follow the Division's guidance in that a NOTE is added to the scope of Section 5158 stating that implementing a program in accordance with Section 5157 will meet the contractor's obligations under Section 5158. Certainly, host and contractor employers may continue to follow such guidance either through contractual agreement or mutual consent. However, the Board does not see the necessity to make compliance with Section 5157 a mandatory requirement for all contractors in all host facility situations. Therefore, the Board declines to make the recommended revision and shall continue to allow contractors the option of complying with Section 5157 in lieu of Section 5158.

Comment #2:

The commenters contend that the proposed revision to Section 5157(c)(8)(A) means that Section 5158 construction contractors are not required to use a written permit for entry, despite the fact that Section 5157 host employers are required to have a written permit entry program. The written permit entry program is meant to insure the safety of both host and contractor employees by involving all parties in the process of identifying, evaluating and preparing for all possible confined space hazards.

Response #2:

Contractors under the scope of Section 5158 are not required to obtain a written permit for entry in accordance with Section 5157. Existing subsection 5157(c)(8)(A) requires host employers to inform contractors that they would only be allowed to enter a permit space if they complied with Section 5157. Under that subsection, if a contractor only complied with Section 5158 and did not comply with Section 5157 it would be the host employer that could potentially be in violation for allowing the contractor to enter. With the proposed revision, the host employer could allow such a contractor employer to enter if they comply with Section 5157 or the section that applies to them. Certainly, as host or controlling employer of the confined space, an employer can place safety obligations on contractors that go beyond the minimum requirements of Section 5157 or Section 5158. However, for those situations where the contractor is appropriately complying with Section 5158 and the host employer concurs, then the Board believes it is inappropriate for a host employer to be obligated to prohibit entry. Therefore, the Board declines to modify the proposal as suggested by the commenters and shall retain the language as originally proposed.

Comment #3:

There are other areas in Sections 5157 and 5158 that differ considerably, such as the definition of a confined space, the acceptable lower flammable limit (LFL), written entry permits, hot work permits, and non-atmospheric hazards. These differences contribute to confusion and therefore these issues should be addressed rather than just the one issue of oxygen enrichment.

Response #3:

The differences between Sections 5157 and 5158, that the commenters point out, are not proposed for change and therefore a comment on these issues cannot be considered during this

rulemaking process. However, the Board believes that the proposed addition of a multi-employer communication requirement will help resolve the confusion by requiring employers to discuss these issues along with any other issues that pertain to the safety of their employees in the confined space. Therefore, the Board declines to make any modifications to the proposal based on the comment.

The Board thanks Ms. Haller, Mr. Patzer, and Ms. McAuliffe for their participation in the Standards Board's rulemaking process.

Richard Warner, Southern California Edison by a letter dated November 9, 2000.

Comment:

The commenter does not oppose the proposed oxygen-enrichment requirements. However, the commenter cannot support the requirement to coordinate entries in multi-employer operations as specified in Section 5158(e)(1)(J). The commenter references a comment made in 1993 where the commenter stated that Federal OSHA exempted electric utilities from the federal equivalent of Section 5157 due to their unique type of work and well recognized hazards. The commenter's organization has a large number of underground vaults that need to be entered each year. The proposed changes to Section 5158(e)(1)(J) would place an unnecessary burden on the commenter's equipment and customers that would result in equipment carrying an additional load and customers not having power for longer periods of time. The fatalities mentioned by the Board did not occur in the electric utility industry and the commenter is not aware of such fatalities occurring in his industry. At a minimum, electric utilities should be exempt from the requirements of that subsection.

Response:

The Board is aware of the Federal OSHA exemption and the commenter's 1993 comment on the proposal that added Section 5157. In 1993, the Board originally proposed to replace what is now Section 5158 with the new requirements of Section 5157. Based on comments by the commenter and other organizations exempt under the Federal OSHA standard, the Board modified its proposal to retain Section 5158 for those industries not covered by the Federal OSHA equivalent of Section 5157. The 1995 fatalities pointed out that employers covered by the two standards should communicate and coordinate their confined space entries. However, in the opinion of at least one Administrative Law Judge, employers covered by the different sections were not necessarily obligated to do so by the current regulations. In 1995, the construction workers who later died were also exempted by Federal OSHA from Section 5157 due to their unique working conditions. The Board does not feel it is appropriate to wait for a fatality to happen in an electric utility vault or any other confined space covered by Section 5158 before including that industry and all industries in an obligation to communicate hazards and coordinate with other employers. From the commenter's statements, it is unclear what number of the 50,000 electric utility vault entries are done by employers other than the commenter and how sharing information with those employers would affect electric equipment and customers. Regardless, the safety provided by multi-employer communication and coordination under subsection 5158(e)(1)(J) is much more

important and can be done at minimal cost and in a timeframe that should not delay the commenter's obligations to restore electric power. Therefore, the Board declines to make the suggested changes and shall continue to require all employers to communicate hazards and coordinate entries with other employers in multi-employer confined space situations.

The Board thanks Mr. Warner for his participation in the Standards Board's rulemaking process.

## II. Oral Comments

No oral comments were provided at the October 19, 2000 Public Hearing.

### **DETERMINATION OF MANDATE**

These regulations do not impose a mandate on local agencies or school districts as indicated in the Initial Statement of Reasons.

### **ALTERNATIVES CONSIDERED**

The Board invited interested persons to present statements or arguments with respect to alternatives to the proposed regulation. No alternative considered by the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the adopted action.